***THE HONOURABLE SRI JUSTICE T.CH.SURYA RAO**
AND
THE HON'BLE SRI JUSTICE G. GHANDRAIAH

+WRIT PETITION NOS. 16850 AND 12682 OF 1998
(Per TCSR,J)

% THURSDAY, THE TWENTY FIRST DAY OF DECEMBER
TWO THOUSAND AND SIX

M. Satyanarayana s/o Sri Chalapathi Rao,
Hindu, aged about 62 years, Occupation:
R/o.H.No.16-9-3341/1, Old Malakpet,
Hyderabad and another

..... PETITIONERS

Vs.

$Viswanath Kakar,
S/o. Reyabahadur Dwarakanath (died) per L.Rs.
Hindu, aged 70 years, Occupation: Business,
R/o. H.No.1-144, Saroornagar, RR District,
Hyderabad – 35 and others

.....RESPONDENTS

! Counsel for the writ petitioner: Mr.P.R.Prasad
Mr. V. Parabhrahma Sastry

^ Counsel for the Respondents: MR. A. Sudershan Reddy
G.P. for Revenue

< Gist:

>Head Note

? CITATIONS:

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NO.16850 OF 1998
(Per TCSR,J)

DATED 21---12---2006

M.Satyanarayana s/o Sri Chalapathi Rao,
Hindu, aged about 62 years, Occupation:
R/o H.No.16-9-3341/1, Old Malakpet,
Hyderabad. And another … Petitioners

v.

Viswanath Kakar, S/o Reyabahadur Dwarakanath (died) per L.Rs.
Hindu, aged 70 years, Occupation: Business,
r/o H.No.1-144, Saroornagar, RR District,
Hyderabad - 35. And others … Respondents

WRIT PETITION NO.12682 OF 1998
(Per TCSR,J)

DATED 21---12---2006

M.Subbarao s/o M.V.Chalapatirao,
Hindu, 70 years, retired Govt. Employee,
Resident of Hydeabad. And another … Petitioners

v.

Mr.Viswanadha Kakkar s/o Dwarakanadh Kakkar,
Contract, H.No.1-144, Saroornagar, R.R.District,
Hyderabad – 35. And others … Respondents

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NOS.16850 AND 12682 OF 1998

COMMON ORDER: (Per TCSR,J)

Inasmuch as both the writ petitions emanate from the Judgment dated 19.02.1998 passed by the learned Special Court under the A.P. Land Grabbing (Prohibition) Act, Hyderabad, in L.G.C. No.86 of 1986, they can be disposed of together.

The writ petitioners herein who are the respondents in L.G.C. No.86 of 1996 seek a writ of certiorari to quash the said Judgment.

The first respondent in both these writ petitions filed L.G.C. No.86 of 1996 before the Special Court alleging *inter alia* that the respondents therein, the present writ petitioners, grabbed the application schedule property admeasuring 1506 square yards of land covered by survey No.17 (old survey No.14) of old Malakpet, Hyderabad, and sought for delivery of the said property to him after evicting the respondents therefrom. That application eventually after conducting full-fledged enquiry was allowed by the learned Special Court declaring the respondents as land grabbers and directing them to vacate the land in dispute and deliver vacant possession of the same to the applicant. The writ petitioners, who are the respondents therein, are now assailing the said Judgment.

A brief narration of facts would elucidate the fact in controversy between the parties *inter se*. The applicant before the Special Court claimed that the land in dispute as described more fully in the schedule

appended to the application is situate at old Malakpet, Hyderabad, and was an evacuee property, having been declared as such by the Custodian of the evacuee property. It was then sought to be sold in public auction held by the Regional Settlement Commissioner, Bombay, on 21.01.1957. The applicant purchased the said property in open auction and the sale was confirmed by the Regional Settlement Commissioner. Provisional possession of the said land was given to the applicant in the month of December, 1957 when the applicant shifted to Delhi after the said purchase. In his absence, certain people trespassed into his land. The applicant made a prolonged correspondence with the Regional Settlement Commissioner, Bombay, for delivery of the physical possession of the land. On his correspondence, in the year 1982 the files pertaining to the land in dispute were sent to the Commissioner, Survey Settlement and Land Records, Hyderabad, with delegated power of Custodian, evacuee properties. Accordingly, on 27.08.1982, the Custodian of evacuee property, Hyderabad, issued orders to hand over the possession of the land to the applicant after due enquiry and scrutiny. Pursuant thereto, the Tahsildar, Musheerabad, handed over possession to the applicant the disputed land on 02.12.1982 through Revenue Inspector under a panchanama but the respondents trespassed into the said land and dispossessed the applicant forcibly. The Custodian of evacuee property asked the Deputy Director, Survey and Land Records to survey the said land and submit his report. The Deputy Director actually measured the land and concluded that it was the same land that was sold to the applicant in public auction on 21.01.1957.

The respondents resisted that application by filing two separate counters by respondents 1 and 5; and respondents 3 and 4 respectively. The quintessence of the claim of the respondents seems to be that the disputed property was not an evacuee property and it originally belonged to one Smt. Sri Rangamma; and that she divided the said property into plots and sold plot Nos.81 an 82 out of them in favour of

Smt.Yasin Begum in 1355 Fasli; and plot No.84 was sold in favour of Sri Ahmedulla Khan and Sri Basith Ali Khan; and plot No.85 was sold to Smt.Mahamooda Begum in 1356 Fasli. Smt.Yasin Begum in turn sold her plots in the year 1357 Fasli to Sri Gulam Jeelani. After number of transactions thereafter the land eventually came into the possession of the defendants in O.S.No.211 of 1973 filed by the applicant. Plot No.84 was purchased from Ahmedulla Khan and Basith Ali Khan by the third respondent which was to the north of the property belonging to Smt.Yasin Begum. Plot No.85 was also purchased by the third respondent and he constructed a house bearing No.16-9-334/1 on plot No.84. Thus, the property pertains to plot Nos.84 and 85 whereon house bearing No.16-9-334/1 is in existence is covered by survey No.13/Ba and T.S.No.10 of old Malakpet. The property claimed by the applicant is different from the property purchased by the third respondent. The applicant, as aforesaid, filed O.S.No.211 of 1973 against the purchasers from Smt.Yasin Begum and lost the suit. Having lost the suit, he now turned against the property of the third respondent by making the instant false claim. The respondents could not be called as land grabbers and, therefore, the application was liable to be dismissed.

On the above pleadings, the learned Special Court settled the following issues:

1) Whether the petitioner is the owner of the subject matter of the petition i.e. 1506 square yards in survey No.17 of Malakpet, Charminar Mandal, Hyderabad District, within the boundaries described in column No.12?
2) Whether the respondents are land grabbers in respect thereof?
3) To what relief is the petitioner entitled to?

At the time of enquiry, two witnesses were examined on the side of the applicant besides getting Exs.A.1 to A.13 marked. Two witnesses were examined on the side of the respondents and Exs.B.1 to B.13 were got marked.

Appreciating the evidence thus adduced both oral and

documentary on either side, the learned Special Court under the impugned Judgment allowed the application. The learned Special Court was of the view that the property originally belonged to Smt.Yasin Begum was declared as an evacuee property and was sold in public auction and was purchased by one Atmaram Jethanad from whom the applicant purchased the same and the respondents miserably failed to prove that the property of Smt.Yasin Begum was disposed of even prior to Ex.A.1 gazette notification or it was not the property that is covered by plot Nos.81 and 82.

The learned counsel appearing for the writ petitioners seek to contend that the property in question is not covered by Ex.A.1 notification and there has been no proof whatsoever to show that the land in dispute is the subject matter of Ex.A.1 notification. At any rate, the learned Special Court ignored the observations made *inter alia* in Ex.B.11 Judgment which are relevant under Section 43 of the Indian Evidence Act and thereby committed an illegality. It is further contended that the delivery proceedings are *non est* in view of the observations made in the Judgments of this Court and that the report of the Deputy Director, Survey and Land Records, should not be relied upon by the learned Special Court.

Per contra, the learned counsel appearing for the first respondent represents that the proceedings under the Administration of Evacuee Property Act (for brevity 'the Act') having become final having not been assailed either by filing an appeal as provided under the statute or a revision and, therefore, they cannot be questioned; and that the property obviously vests in the Custodian under Section 8 of the Act and in that view of the matter title over the disputed land in favour of the first respondent/applicant cannot be doubted, except the dispute over the identity of land, if any. The report of the Deputy Director, Survey and Land Records, clarifies the identity and, therefore, the occupation of the land in dispute by the first respondent is without any entitlement thereto.

In view of the rival contentions, the points that arise for our

determination in these writ petitions are

1) Whether the property in dispute is an evacuee property?

2) Whether the respondents are land grabbers?

From the competing claims of the parties, there seems to be a serious dispute as to the identity of the land. While the applicant claims that the land in dispute is covered by survey No.17 new (old survey No.14); the respondents claim that the land in dispute is not covered by survey No.17 but it is a different land. It is the clear case of the applicant that the land in dispute is covered by survey No.17 (old survey No.14) admeasuring 1506 square yards situate in old Malakpet is an evacuee property having been declared as such under Ex.A.1 gazette notification. The applicant claims to have purchased the same from one Atmaram Jethanad who was the highest bidder in the auction under an agreement of sale and the General Power of Attorney executed by the said Atmaram Jethanad in his favour.

It had been specifically pleaded *inter alia* in the concise statement that the petitioner was the debenture purchaser of the claim compensation of one Atmaram Jethanad before Regional Settlement Commissioner, Bombay and purchased the said property situate at Old Malkpet, Hyderabad bearing survey No.17 (old survey No.14) admeasuring 1506 square yards in open auction held by the said authority on 21.01.1957 and provisional possession of the said land was given in the month of December, 1957. The petitioner who examined himself as P.W.1 claimed in the first instance that he purchased the schedule land from the authorities in the public auction. At a later stage, while introducing the document, he deposed that under Ex.A.5 the auction was notified wherein one Atmaram Jethanad purchased the property including the schedule land under Ex.A.6 sale certificate and P.W.1 purchased the schedule land from the auction purchaser under Ex.A.7 agreement dated 26.03.1956 and Ex.A.8 General Power of Attorney executed in his favour by the said auction purchaser. There appears some dichotomy in the pleading and evidence. Nonetheless,

the petitioner produced the sale certificate under which Atmaram Jethanad is said to have purchased the properties including the disputed property and the agreement as well as the General Power of Attorney are said to have been executed by the said Atmaram Jethanad in his favour. The documentary evidence always excludes the oral evidence and it is, therefore, expedient to examine the documentary evidence first. Ex.A.1 is in Urudu. Ex.A.2 is the translated copy thereof. A perusal of the document shows that the properties mentioned in the said gazette have been declared as evacuee properties and have been vested in the Custodian of evacuee properties, Government of Hyderabad. Serial number 6 shown therein is claimed as pertaining to the disputed property. The said entry is as under:

> "House No.1520 situated at Gosha Mahal, Hyderabad Deccan and a plot of land No.14/17 admeasuring 1506 sq. yards situated at old Malakpet (old and new) belonging to Smt.Yaseen Bi (Mrs. Mohd. Ameenuddin) and Sri Amminuddin."

No other details or boundaries of the property have been given. Under Ex.A.3 notification objections have been called for. In Ex.A.3 the same description of the property has been given as in the case of Ex.A.2. Ex.A.4 is the sketch said to have been annexed to the sale certificate. Ex.A.5 is terms and conditions of sale notification. Item No.2 thereof is relevant and is as under:

> "Plot of land No.17 (old 14) of Old Malakpet (adjoining house No.16-9-325) belonging to one Yasin Begum".

Ex.A.6 is the sale certificate dated 28.10.1959. The schedule appended to the certificate shows the description of the property as under:

> "Evacuee Property known as plot of land No.17 (Old 14) Old Malakpet, Hyderabad. Sale price Rs.2600/- (Rupees two thousand six hundred only)."

In this crucial document also, the description of the property with reference to which the property could be identified has not been clearly given. Ex.A.7 is the so-called agreement under which the petitioner is said to have purchased the property. No description of the property which is the subject matter of dispute has been given *inter alia* therein.

However, a reference has been made to a claim index whereunder the property is said to have been more fully described. Such a letter has not been produced before the Court. Even in Ex.A.8, General Power of Attorney, the property has not been clearly mentioned. Ex.A.11 is the proceedings dated 27.02.1983 submitted by the Deputy Director of Survey and Land Records, Hyderabad, in R.C.No.3/79/83 dated 27.02.1983, whereunder the Deputy Director is said to have localized the disputed land in the presence of both the parties, addressed to the Commissioner of Survey Settlement and Land Records, Hyderabad. It is the crucial document under which the property in dispute is said to have been localized and identified by the Deputy Director. Ex.A.12 is the certified copy of the plan appended to Ex.A.11 and Ex.A.13 is the certified copy of Panchanama dated 02.12.1982 under which the property is said to have been delivered to the applicant by the Revenue Inspector. The documents referred to hereinabove except Exs.A.11 and A.12 cannot help identifying the property in dispute. Exs.A.11 and A12 have been denied by the respondents by putting a suggestion to P.W.1 in the cross-examination. Obviously, Ex.A.11 report was submitted after the litigation between the parties *inter se* has been commenced. The report reads that at the instance of the Commissioner of Survey Settlement and Land Records, the Deputy Director inspected the disputed property and other properties. The probative value of the document shall have to be seen. The Deputy Director who submitted this report has not been examined before the Court in proof of the contents of the said document and Ex.A.12 plan said to have been attached to Ex.A.11. It is no doubt true that the Deputy Director, Survey and Land Records is a public servant and at the direction of the Commissioner of Survey Settlement and Land Records prepared a plan Ex.A.12 and submitted his report Ex.A.11. But having regard to the fact that Ex.A.12 was not made by the authority of the State Government that is in usual course of discharging his duties during the course of survey and settlement operations but the Deputy Director prepared them at the

directions of the commissioner for a cause viz. for the purpose of handing over the property to the applicant, Ex.A.12 cannot get the necessary authenticity. No presumption, therefore, can be drawn under Section 83 of the Indian Evidence Act which reads as under:

> "83. Presumptions to maps or plans made by the authority of Government:- The Court shall presume that maps or plans purporting to be made by the authority of the Central Government or any State Government were so made, and are accurate; but maps or plans made for the purpose of any cause must be proved to be accurate."

A perusal of the said provision makes it obvious that the presumption of law shall be drawn in respect of maps or plans made by the authority of the Central or State Government as accurate. But such a presumption cannot be raised in respect of maps or plans made for the purpose of any cause and they shall be proved to be accurate. The second limb of Section 83 makes the legal position visibly clear. Obviously Exs.A.11 and A.12 have been prepared and drawn by the Deputy Director, Survey and Land Records, only for the purpose of a cause of handing over the possession to the applicant as directed by the Commissioner of Survey Settlement and Land Records. The accuracy of the plan, the truth or otherwise of the contents of the report shall be the subject matter of proof as can be seen from Section 83 of the Indian Evidence Act.

As discussed herein above, the Deputy. Director who is the author of the report and plan has not been examined to prove the same. In the absence of any proof the inevitable conclusion is that these two crucial documents cannot be considered and relied upon by the Court. *De hors* Exs.A.11 and A.12, the other documents filed on the side of the applicant cannot help identifying the land in dispute. At any rate with reference to those documents, it cannot be decisively concluded that they pertain to the property in dispute in the instant case. Somehow, the learned Special Court overlooked the clear legal position and sought to place reliance upon Exs.A.11 and A.12 eventually to reach a conclusion with reference to the said documents that the land in dispute is the very

property covered by the other documents filed on the side of the applicants. The documents which have not been proved when disputed by the adversary shall have to be eschewed from consideration. The oral evidence of P.W.1 cannot obviously prove either the contents of Ex.A.11 or Ex.A.12 plan. The oral evidence of P.W.2 equally cannot help in proving these documents.

Turning to the evidence adduced on the side of the respondents Ex.B.1 is the certified copy of the Judgment in O.S.No.211 of 73 dated 22.08.1978 passed by the learned VI Assistant Judge, City Civil Court, Hyderabad. The plaintiff therein is obviously the applicant herein although the defendants therein are different and the respondents herein are not parties thereto. The applicant being an eo-nominee party to the said suit is obviously bound by the said Judgment. Although Ex.B.1 cannot operate as *res judicata*, and in fact no such plea has been taken in this case, the binding nature of the document cannot be ignored. The principle of estoppel, in our considered view, can be raised qua the applicant. This legal position clearly has not been considered by the Special Court. A conclusion has been reached by the Civil Court in O.S.No.211 of 1973 that the plaintiff's ownership and possession in respect of the suit property is of doubtful character which has been sought to be avoided by the learned Special Court on the premise that the suit filed being a suit for permanent injunction simplicitor, the judgment cannot operate as *res judicata* in so far as the title is concerned. In fact, it has not been pleaded by the respondents that Ex.B.1 Judgment operates *res judicata* presumably for the simple reason that they are not parties thereto.

It may be reiterated here that the plea of the respondents that plot Nos.81 and 82 pertaining to survey No.17 (old survey No.14) had been purchased by Smt.Yasin Begum from the original owner Smt. Sri Rangamma and in turn sold them to Sri Gulam.Jeelani and after series of transactions eventually they were purchased by the defendants in O.S.No.211 of 1973 and similarly Plot No.84 pertaining to survey No.13

(old) had been purchased by Ahmedulla Khan and Basith Ali Khan from the original owner Smt. Sri Rangamma and plot No.85 in survey No.13 (old) had been purchased by Smt Mahamooda Begum and eventually they were purchased by the respondent No.3 and constructed the house bearing Municipal No.16-9-334/1 in plot Nos.84 and the property bearing Plot Nos.84 and 85 are situate in old survey No.13 and town survey No.10 of old Malakpet and thus the property claimed by the petitioner is different from the property claimed by the respondent No.3. In view of the specific plea taken by the respondents, even for the purpose of showing the *prima facie* title, the applicant must show before the Court that the documents sought to be relied upon by them pertain to the land in dispute. Exs.B.4, B.6, B.8, B.10 sale deeds and B.5, B.7 and B.11 translation copies thereof are sought to be relied upon by the respondents to show their title to the property in dispute. While the applicant claims that they purchased the property originally belonged to Smt.Yasin Begum which was notified as an evacuee property when the said Yasin Begum left for Pakistan; the respondents claim that the original owner was Smt. Sri Rangamma from whom Smt.Yasin Begum purchased a part of the property under Ex.B.10 registered sale deed and the other part of the property was purchased by Ahmedulla Khan, and Basith Ali Khan and others. Ex.B.4 pertains to 1357 Fasli, 1948 A.D., whereas Ex.A.1 gazette notification is dated 14.06.1950. This document needs to be localized to see clearly whether it relates to the property in dispute or not. In Ex.B.6 sale deed a clear description of the property purchased thereunder has been given. Similarly, Exs.B.8 and B.10 sale deeds. When the Tahsildar, Musheerabad Taluk, issued a warrant of eviction, the respondents filed Writ Petition No.8653 of 1982 assailing the same, and eventually this Court allowed the writ petition while quashing the eviction notice. When there had been again an attempt to take possession of the land in dispute Writ Petition No.6994 of 1984 was filed and on the second occasion too, the impugned notice was quashed. In the above writ petitions, it was specifically pleaded by the

respondents herein that the land in dispute was not the evacuee property. Not only that, having regard to this claim on the part of the respondents, it becomes necessary to identify the disputed land so that the title in respect thereof can validly be traced by the rival contenders. The Deputy Director, Survey and Land Records, who submitted Ex.A.11 report becomes therefore, a necessary witness to be examined who can explain the identity of the land with reference to valid and cogent reasons in support of his conclusion. Obviously, the respondents have no occasion or opportunity to submit their objections, if any, to the report of the Deputy Director since he is not a Commissioner appointed by the Court. Ex.B.11 report remains not proved on account of non-examination of the Deputy Director. This crucial aspect, as discussed hereinabove, has been totally lost sight of by the learned Special Court.

It has been sought to be contended before us that the respondents cannot be termed as land grabbers having regard to the specific plea taken by them and their endeavour to trace the title to the original owner. The contention mainly depends upon the crucial question as to the identity of the property in dispute having regard to the rival claims. In that view of the matter, the questions as to whether the property in dispute is an evacuee property and whether the respondents are the land grabbers shall have to be left open till the conclusion can legitimately be reached as regards the identify of the property covered by the document sought to be relied upon by the applicant. It is not expedient at this stage to dispose of or to adjudicate the respective rights of the parties merely on the ground of non-examination of the Deputy Director. It is always better to ascertain the truth for an effective adjudication of the matter. Even the documents filed on the side of the respondents have not been sought to be localized and they too require an opportunity for that purpose. Therefore, much of the arguments sought to be addressed on either side as to the validity of the notification issued under Ex.A.1 with reference to the provisions of Administration of Evacuee Property Act and the definition of a ‘grabber’ with reference to

the provisions of the A.P. Land Grabbing (Prohibition) Act shall have to be left open to be adjudicated by the learned Special Court only when the property is identifiable with reference to the respective documents filed on either side. For that purpose, the matter needs to be remitted to the Special Court for fresh consideration which would subserve the interest of both the parties.

For the above reasons, both Writ Petitions are allowed and the impugned Judgment of the learned Special Court is hereby set aside and the matter is remitted to the Special Court for fresh disposal in accordance with law and in the light of the observation made *inter alia* in this Judgment. The costs shall abide the result of the land grabbing case before the Special Court.

T.CH.SURYA RAO,J

G.CHANDRAIAH,J

Dated _____ December, 2006.
VGSR/Dvs

It is represented at this stage by the learned counsel that amounts had been deposited into the Special Court pursuant to the orders passed by means of interim direction. The petitioners are entitled to withdraw the same. Having regard to the pendency of the matter for a long time, the Special Court may make an endeavour to dispose of the case as early as possible.

T.CH.SURYA RAO,J

G.CHANDRAIAH,J

RNS
Dt.21.12.2006.